

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

January 27, 2004 Session

STATE OF TENNESSEE v. DENNIS JOE PHILLIPS

Direct Appeal from the Criminal Court for Anderson County
No. A1CR0399 James B. Scott, Jr., Judge

No. E2003-00401-CCA-R3-CD
April 5, 2004

The defendant, Dennis Joe Phillips, was indicted for driving under the influence, third offense, and violation of the implied consent law. See Tenn. Code Ann. §§ 55-10-401, 55-10-406. Finding that the arresting officer did not have specific articulable facts to justify the traffic stop, the trial court granted a defense motion to suppress. In this appeal by the state, the issue presented for review is whether the detention was based upon reasonable suspicion. Because the record demonstrates that the officer had a proper basis for the investigatory stop, the judgment of the trial court is reversed and the cause is remanded for trial.

Tenn. R. App. P. 3; Judgment of the Trial Court Reversed and Remanded

GARY R. WADE, P.J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Paul G. Summers, Attorney General & Reporter; John H. Bledsoe, Assistant Attorney General; and Jan Hicks, Assistant District Attorney General, for the appellant, the State of Tennessee.

Nancy Meyer, Assistant Public Defender, for the appellee, Dennis Joe Phillips.

OPINION

Shortly after midnight on September 1, 2001, Lake City patrolman Todd Johnston saw a Toyota sedan make a right turn off of Highway 441 onto Cobb Hollow Road. During the course of the turn, the vehicle was driven across each of the two lanes of the unmarked Cobb Hollow Road, veering into the parking area of an unlighted, closed gas station before being returned to the public right of way. Because the officer was directly behind the vehicle, he immediately initiated a traffic stop, turning on his blue lights while the vehicle was still on the wrong side of the roadway. The Toyota was maneuvered into the proper lane and traveled between three hundred and five hundred feet before being stopped on the shoulder of the road. The roadway was dry and there were no traffic hazards. The defendant, who was driving the car, exhibited signs of intoxication and the officer made the arrest for driving under the influence.

At the suppression hearing, Officer Johnston explained that he stopped the vehicle because of the lateness of the hour and the reckless manner in which the car was being driven. The officer denied that prior to the stop he had been stationed in his cruiser near a tavern, watching as patrons drove away.

The defendant testified that just before being stopped by Officer Johnston, he had picked up his father at a tavern on Highway 441 and was en route to his residence on Cobb Hollow. He stated that he had “seen a Lake City Police car sitting at the Subway next to the Exxon station on 25 when [he] passed . . . to turn on 441.” He was uncertain whether the police cruiser was that driven by Officer Johnston. The defendant acknowledged that in making the turn, he “may have got[ten] a little wide” but claimed he “wasn’t on the wrong side of the road.”

Both the state and federal constitutions protect individuals from unreasonable searches and seizures; the general rule is that a warrantless search or seizure is presumed unreasonable and any evidence discovered subject to suppression. U.S. Const. amend. IV; Tenn. Const. art. I, § 7; Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997). An automobile stop constitutes a “seizure” within the meaning of both the Fourth Amendment of the United States Constitution and Article I, section 7 of the Tennessee Constitution. Michigan Dep’t of State Police v. Sitz, 496 U.S. 444, 450 (1990); Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Binion, 900 S.W.2d 702, 705 (Tenn. Crim. App. 1994); State v. Westbrook, 594 S.W.2d 741, 743 (Tenn. Crim. App. 1979). The fact that the detention may be brief and limited in scope does not alter that fact. Prouse, 440 U.S. at 653; State v. Pulley, 863 S.W.2d 29, 30 (Tenn. 1993); Binion, 900 S.W.2d at 705; Westbrook, 594 S.W.2d at 743. The basic question, as indicated, is whether the seizure was “reasonable.” Binion, 900 S.W.2d at 705 (citing Sitz, 496 U.S. at 444). The state always carries the burden of establishing the reasonableness of any detention. See State v. Matthew Manuel, No. 87-96-III (Tenn. Crim. App., at Nashville, Nov. 23, 1988).

Among the narrowly defined exceptions to the warrant requirement is an investigatory stop. See Terry v. Ohio, 392 U.S. 1, 27-28 (1968). An investigatory stop is deemed less intrusive than an arrest. See id. In Pulley, our supreme court ruled that “the reasonableness of seizures less intrusive than a full-scale arrest is judged by weighing the gravity of the public concern, the degree to which the seizure advances that concern, and the severity of the intrusion into individual privacy.” 863 S.W.2d at 30.

Our determination of the reasonableness of the stop of a vehicle depends on whether the officer had either probable cause or an “articulable and reasonable suspicion” that the vehicle or its occupants were subject to seizure for violation of the law. See Prouse, 440 U.S. at 663; State v. Coleman, 791 S.W.2d 504, 505 (Tenn. Crim. App. 1989). Probable cause has been generally defined as a reasonable ground for suspicion, supported by circumstances indicative of an illegal act. See Lea v. State, 181 Tenn. 378, 380-81, 181 S.W.2d 351, 352 (1944). While probable cause is not necessary for an investigative stop, it is a requirement that the officer’s reasonable suspicion be supported by “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Terry, 392 U.S. at 21; Pulley, 863 S.W.2d at 30; Coleman,

792 S.W.2d at 505; see also State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992) (applying Terry doctrine in context of vehicular stop). In determining whether reasonable suspicion exists, an important factor in the analysis is that reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. Pulley, 863 S.W.2d at 32 (citing Alabama v. White, 496 U.S. 325, 330 (1990)).

Courts considering the issue of reasonable suspicion must look to the totality of the circumstances. Those circumstances include the personal observations of the police officer, information obtained from other officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. Watkins, 827 S.W.2d at 294 (citing United States v. Cortez, 449 U.S. 411, 417-18 (1981)). Objective standards apply rather than the subjective beliefs of the officer making the stop. State v. Norword, 938 S.W.2d 23, 25 (Tenn. Crim. App. 1996).

When the trial court makes a finding of facts at the conclusion of a suppression hearing, the facts are accorded the weight of a jury verdict. State v. Stephenson, 878 S.W.2d 530, 544 (Tenn. 1994). The trial court's findings are binding upon this court unless the evidence in the record preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); see also Stephenson, 878 S.W.2d at 544; State v. Goforth, 678 S.W.2d 477, 479 (Tenn. Crim. App. 1984). Questions of credibility of witnesses, the weight and value of the evidence, and resolution of conflicts in evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from the evidence. Odom, 928 S.W.2d at 23. The application of the law to the facts, however, requires de novo review. State v. Daniel, 12 S.W.3d 420, 423-24 (Tenn. 2000). Likewise, if the evidence does not involve a credibility assessment, the reviewing court must examine the record de novo without a presumption of correctness. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

At the close of the suppression hearing, the matter was taken under advisement so that counsel could brief the issue. Some fifteen months later, the trial court "ordered that all evidence obtained as a result of the stop is suppressed . . . , the [c]ourt having found that the stop was unlawful for the reasons stated . . . on the record." Four days later, the trial court entered a second order:

[T]he [c]ourt . . . finds that the inadvertent turn described by the officer as having been made by [the defendant] does not constitute a lawful basis for the stop, which was in violation of [the defendant's] rights under both the law and the Tennessee and U.S. Constitutions

An accompanying opinion provided that "the inadvertent wide turn described by the officer in the proof, was not a basis supporting sufficient specific articulable facts that would justify the stop of

the defendant's vehicle." In its ruling, the trial court concluded that the conduct observed by the officer did not qualify as a violation of the law.

The record on appeal, however, demonstrates that the trial court accepted as factual the testimony of the officer, who described the vehicle as not just making a "wide" turn but actually entering the parking lot adjacent to the driver's left in the oncoming lane of traffic. A diagram prepared by the officer is included in the record and establishes that the left side of the defendant's vehicle missed Cobb Hollow Road entirely and that the right side of the Toyota barely penetrated its intended target. An investigatory detention requires only a reasonable and articulable suspicion that the driver of the vehicle was violating the law. The lateness of the hour and the unusually wide turn were a reasonable basis for the stop. Under these circumstances, the order of suppression could be upheld only if the trial court had rejected the veracity of the officer's testimony and accredited the claims of the defendant. In our view, the record establishes that the officer had a reasonable basis to suspect the defendant of an unlawful act.

Accordingly, the judgment of the trial court is reversed and the cause is remanded for trial.

GARY R. WADE, PRESIDING JUDGE